

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN W. DANFORTH COMPANY,

Plaintiff,

v.

ORDER
11-CV-1002S

ILLINOIS NATIONAL INSURANCE COMPANY,

Defendant.

1. Plaintiff John W. Danforth commenced this declaratory judgment action seeking a declaration that Defendant Illinois National Insurance Company wrongfully denied coverage under the Commercial Umbrella insurance policy issued to Plaintiff, and is obligated to pay any amounts in excess of Plaintiff's one-million dollar primary coverage expended to settle or to pay any judgment that results from FMC v. John W. Danforth, a third-party action in Eberl v. FMC Corporation. (No. 09-CV-703S). Jurisdiction is based on diversity and the parties agree that New York law applies. Presently before this Court is Defendant's Motion for Summary Judgment declaring that it is not obligated to provide excess insurance coverage. This motion, filed under seal, is fully briefed and the Court finds oral argument unnecessary. For the reasons stated in the Decision filed under seal this same date, Defendant's motion is granted.

2. In support of its Motion for Summary Judgment (Docket No. 23 (Amended Notice of Motion)), Defendant submitted the Affidavit of Kevin F. Cavaliere, Esq., with Exhibits A-Q (Docket No. 22), a supporting Memorandum of Law (Docket No. 24), and a Statement of Material Facts Pursuant to Rule 56 (a)(1) (Docket No. 27). In response,

Plaintiff submitted a Memorandum of Law (Docket No. 29), Response to Statement of Material Facts (Docket No. 30), Affidavit of Charmaine A. Derenda with Exhibit A (Docket No. 31), Affidavit of Michael Bialasik (Docket No. 32), Affidavit of Robert D. Leary, Esq., with Exhibit A (Docket No. 33), Affidavit of Robert Gilmour with Exhibits A-L (Docket No. 34), Affidavit of Ryan Knoph with Exhibits A-L (Docket No. 35), and the Affidavit of Dan D. Kohane, Esq., with Exhibit A (Docket No. 36). Defendant submitted a reply Memorandum of Law (Docket No. 38). This Court previously granted for good cause shown Defendant's unopposed motion to file all submissions related to this summary judgment motion under seal inasmuch as the documents referenced therein are covered by a stipulation between the parties, so-ordered by Magistrate Judge Scott, regarding the exchange, production, and filing of confidential information. (Docket No. 20). Because resolution of the present motion also requires reference to these documents, this Court also finds good cause for the related Decision on this motion to be filed and the parties submissions to remain under seal.

3. This Court has reviewed the parties submissions and, for the reasons stated in the Decision filed under seal this same date, Defendant's Motion for Summary Judgment is granted.

IT IS HEREBY ORDERED that the Motion for Summary Judgment of Defendant Illinois National Insurance Company (Docket No. 23) is GRANTED;

FURTHER, that Defendant Illinois National Insurance Company is not obligated to provide Plaintiff John W. Danforth Company with umbrella insurance coverage for the third-party complaint against it in the underlying action pending in this Court captioned Eberl v. FMC Corporation v. John W. Danforth Co. (No. 09-CV-703S);

FURTHER, that the Clerk of the Court is directed to take the necessary steps to close this case.

SO ORDERED.

Dated: July 31, 2012
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Judge